

**From:** David Demland  
**To:** Microsoft ATR  
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**Subject:** Microsoft Comments

Dear Mrs. Hesse,

Here are my comments about the Microsoft settlement.

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Renata Hesse  
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Dear Mrs. Hesse,

I would like to introduce myself. My name is David Demland. I have been in software development for almost 15 years. I have work in all aspects of software development during my career. For the past three years I have been a Quality Assurance (QA) manager. I have spent most of my career centered on not only the software that is developed, but the way software is developed. I have worked hard to get developers to understand that we have to have a goal of "no defects", weather or not we can produce "no defects". I Have done everything from writing code to leading projects and development teams. I say all of this so that it may be clear that I am an expert in the area of software and software development. I wish that all the following comments are taken in that light. The following comments reflect my feelings about the U.S. Government and Microsoft settlement.

I wish to thank the U.S. Government and the Nine States that have settled this long awaited case for all their due diligence and hard work to finally settle this landmark case. All of us in this industry are in your debt for this work. If for no other reason than that we now know that if a hi-tech company can obtain a monopoly they may break the law all they want to remove competition and nothing will happen. Not long ago I had the hope that free competition and a fair business ethic might return to our industry leader, I now know that will never happen.

In July of 1998 there was a great article in the Arizona Republic about John D. Rockefeller and Bill Gates. This article was about a new book called "Titan" by Ron Chernow. This book told about Rockefeller and the author of the article showed how much alike Bill Gates was in respect to business. The only difference is that Rockefeller was not as successful as Gates in getting the government to accept that a monopoly should be allow to do what it wants with no penalties. Did the author of this article know something at that time that the rest of us missed?

As I have read and followed just about everything that came out from the trial all the way down to this proposed settlement one thing has come to mind over and over again - everything being talked about seems to focus on how Microsoft has conducted it's business in the past and how to keep them from doing these practices again in the future. Yet everything points to how fast this industry changes. This leads to a simple question: How will restricting the way Microsoft conducted itself in the 90's apply to today's conduct when the business practices have already changed in the industry as a whole and Microsoft is doing the same thing but in different ways?

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As a guide I will use the Competitive Impact Statement that describes the way this proposal will work. On page 4 there are two bulleted points that came to my attention right a way, for reference they are the third and fourth bullet points. Both of these points are to ensure that third parties can work with Microsoft products. At this point there are no time lines mention, but the point is clear that this will be done so that third parties have time to get their products to work with Microsoft products. These missing time lines will need to be kept in mind, there will be times I will return to these points again.

I find it interesting that on page 14 it talks about the court findings that:

Microsoft threatened to cancel development of its "Office for Macintosh" software, which, as Microsoft recognized, was critical to Apple's business. Microsoft required Apple to make Internet Explorer its default browser and restricted Apple's freedom to feature and promote non-Microsoft browsing software, in order to protect the applications barrier to entry.

Yet the current provisions really do not address this behavior. Of course this would mean that Microsoft would have to have a monopoly on office suites was well. Since this has not been an issue in the court it needs to be looked at to understand the company culture. In the industry today, for the most part, it has been conceded that MS Office is a monopoly in the office suite arena<sup>1</sup>. Will Microsoft use this tactic again? This will be certain.

A look at what has become known as the halloween documents will give a very detail insight about this issue<sup>2</sup>. In the first halloween document Microsoft implies that a way to beat Unix in general would be "Fold extended functionality into protocols / services and create new protocols". This look shows that in the same matter that Microsoft blackmailed Apple they would blackmail the whole industry if they could. Many thought that Microsoft would never extend a recognize standard after the halloween documents were published, yet in Windows 2000, W2K, Microsoft did just that. A well known and accepted security standard was added to by Microsoft. This standard is called Kerberos. Once again the use of the Microsoft OS can be used by Microsoft to change the industry just by doing. Where does this behavior help the industry and the consumer except just to push Microsoft's dominance farther? In Wired magazine there was a comment about the change that Microsoft was going through at that time when Steve Ballmer was moved into Bill Gates position of presidency. James Wallace said:

Ballmer's promotion "represents a fundamental shift away from workgroup computing into not only enterprise computing but internet computing, which requires a different sensitivity"<sup>3</sup>.

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1. Window XP / .NET Microsoft's Expanding Monopoly, [http://www.consumerfed.org/WINXP\\_anticompetitive\\_study.pdf](http://www.consumerfed.org/WINXP_anticompetitive_study.pdf)

2. These are internal Microsoft documents that was published on the internet. After these papers were published, Microsoft not only admitted that were real, but Microsoft went as far as to say this is the way they do normal business. These can be found at: <http://www.opensource.org/halloween1.html>, <http://www.opensource.org/halloween12.html>, and <http://www.opensource.org/halloween3.html>,

3. Why Bill Gates Quit His Job, by James Wallace, Wired December 1998

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Could it be that James Wallace saw what Consumer Federation of America just reported in September 2001<sup>1</sup>? Once again I ask: How can Microsoft be held accountable in a 2001 software industry using a 1990's industry model when the industry has changed so much? Are we saying that when an industry changes fast enough a business that breaks the law should be allowed to because they can change the industry before any sanctions are handed out to them?

At the top of page 18 there is a discussion about what Microsoft Middleware is. The way this has been defined it allows Microsoft to tell the industry what the middleware is, not what the market believes. To understand how this effects the industry as a whole I will relate a story of a problem I ran into that cost the business I worked for eight months of work and left many of our customers in a bind.

Microsoft create the Microsoft Data Access Component, MDAC, to allow Windows applications to use different ODBC drivers to access databases. When Office 2000 was released, Microsoft release a new version of MDAC. This version of MDAC was not compatible with previous version. There were many problems with Microsoft including a new service pack release that had the same problems. To make a long story short it took eight months to get the two fixes to allow both of our products to work with this new MDAC. This is a very high price for a small business. Does this sound like a business that is trying to work with well their customers?

What does this story mean to this settlement? Well if Microsoft can say what is middleware by themselves, what are companies like the one I work for to do? Are we always going to be expected to keep rewriting our products to match what Microsoft tells us to do just because they have a monopoly on the OS and they do not have to care about us as small businesses?

Wait a minute, this settlement dictates that this will not happen because middleware API's have to be disclosed. Take a moment at look closely at this case. Where in this story did anything deal with an API? In fact just after this Office release became a big enough deal to developers, Microsoft announced that MDAC would become part of OS<sup>2</sup>. All these problems were backward compatibility issues and this is just one of the new tools Microsoft can use to control the industry in the new environment that has changed since the 1990's and this settlement does not even address these types of issues. Once again I ask, are hi-tech business allow to break any laws they wish and because the industry changes so fast there is nothing that can be done about it?

This problem of Microsoft doing what ever they want to control the industry appears on page 19 as well. In the last paragraph a Microsoft Middleware Product mentions the Microsoft's Java Virtual Machine. Did you know that this no longer exists? Microsoft, after losing to Sun on the Java Virtual Machine, JVM, issues has now created a new language and drop support for JVM. How is this going to effect the industry? Once again because Microsoft is using it's monopoly power to force business to rewrite all their

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1. Window XP / .NET Microsoft's Expanding Monopoly, [http://www.consumerfed.org/WINXP\\_anticompetitive\\_study.pdf](http://www.consumerfed.org/WINXP_anticompetitive_study.pdf)

2. This was at Microsoft developer days here in Phoenix that later the next year.

products. It is now clear how Steve Ballmer has lead Microsoft into the internet age the same way as Bill Gates lead Microsoft into the 1990's. Their goal is to keep Microsoft the largest player no matter how it effects the consumer or other businesses. What do you think John D. Rockefeller would say today after seeing his business penalized and Microsoft left to doing it over and over again? What is the consumer to think?

In all this there is another accomplice to the dirty deeds of Microsoft. This is the government. That's right. On page 20, the last three lines, the government has told the country do not start a business in an area that will compete with Microsoft Middleware it can not be allowed. Where do I get this from? It is simple, what was the last start-up company able to sell at least a million copies of their product from the start? I have yet to find one. So what this means is if there is a start-up in one of these areas do not worry Microsoft does not have to tell you anything. So just think, after spending a lot of money you will go out of business anyway. What a way to go. The government has said as long as the current competition can stay alive there will be competition, but once that competition is gone, O well. Once again thank you for looking out for the consumer. As it is stated on page 21 this "is intended to avoid Microsoft's affirmative obligations... being triggered by minor, or even, nonexistent, products that have not established a competitive potential in the market". This is a great thought, if there is no competition, how can you be a monopoly? How is no new competition good for the consumer?

I find the commits on page 24 at the bottom of the page rather odd:

Thus, the key to the proper remedy in this case is to end Microsoft's restrictions on potentially threatening middleware, prevent it from hampering similar nascent threats in the future and restore the competitive conditions created by similar middleware threats.

How is this going to be achieved if over a million copies are required on page 21? This seems to be a contradiction to me. Am I missing something?

As if this has not been technical enough let's talk about how the dual boot is to be done on page 26. At the current time W2K was released with a small problem, it does not look at the BOIS for the hard disk information at boot up time. This basically renders tools like System Commander useless. So how is a consumer, or OEM, going to be able to use these tools if Microsoft bypasses common practices. Where is this address to ensure that there is no subversion to activating other partitions and making these tools and their manufactures useless. One argument is that this is an API that has to be disclosed, but if it takes months for this information to become available there is no way to have fixes in place for these companies that create these tools. This will be looked at close a little later.

On page 27 is one of the best examples of how the government failed to help support the free market competition. Here the industry has been told that if you are not one of the 20 largest OEMs, that Microsoft licenses to, you can be locked out of information. This is great, once again any small company has been told that they should not enter into this industry. Does this mean that the government supports only having large business? If not how will a small business be able to compete under this section? Even on page 20 and 28 the message seems to be clear the top 20 OEMs are the only ones that count.

On page 32 there are two issues. At the bottom of the page it talks about dual boot systems being allowed. As I have already talked about, how it this going to be handled if Microsoft continues to bypass standard practices on boot up? If tools like System Commander can be rendered useless what is going to keep Microsoft from allowing this same issues on a dual boot system to discourage OEMs from shipping these systems. Would it not have made more since to ensure that Microsoft uses the industry standards to ensure they do not subvert this issue? I think a very important issue has been missed in this area.

The best part of this page is at the end of the first paragraph. I would like to thank you for penalizing all of us in the industry for Microsoft abusing their monopoly power. I find it outrageous that it was agreed that OEMs must use software substitutions that act like the Microsoft software that it is being substituted for. Is it assumed that these OEMs write their own software? If so that is wrong. There are many companies, like the small ones I have worked for, that do this software and you have just told them if it cost tens of thousands of dollars to rewrite their software do it if they want an OEM use your software in place of Microsoft. What did these businesses do wrong to deserve this penalty?

On page 43 it talks about Microsoft putting information on their MSDN for APIs and other important information that has to be shared. I found this amusing because it does not say how this information should be handled on MSDN. In fact this has allowed Microsoft a great way to make more money off of developers. They can put this information on MSDN in a hidden place and when developers call to find it they can be charged to find out where it is. What a penalty for breaking the law.

Now we come to the timeline items. On page 35 the proposal for the releasing of the XP APIs is a great try, but it still gives Microsoft about a year lead time to get a head of all the other developers. I have created, and maintained, this type of documentation at two different businesses in my career and in every case I have had this type of documentation before we got to far into the early stages of testing. Microsoft should already have this as well. It should not take more than two or three months, at most, to polish these API documents to make them public.

I find it hard to accept that the definition of this timeline, for documentation, is different for the middleware products. I have a real problem with timeline of the last major beta before release before the first release candidate for the middleware products. In most cases this will be only a couple of months before the final release. This will make it hard for other developers to make changes to work in a timely matter. Especially when there are multimillion lines of code in many products today. Please see above about the MDAC story. The standard that the industry tends to follow for a beta test is best put:

The product has completed all of the major features content that has been planned for the final release... During the beta release, the product will be tested for it functionality, specifically with regard to defects.<sup>1</sup>

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1. Michael E. Bays - Software Release Methodology 1999 Prentice-Hall

This definition makes it clear that the industry believes that at the time of the beta test all functionality is complete, this means that the APIs are complete as well, otherwise it would be an alpha test and the product is still changing. Does this timeline not allow Microsoft to hold back information for middleware APIs until it is hard for competitors to be ready at the same time as Microsoft? How does this keep Microsoft from locking out software like Netscape? Please see page 12.

Pages 36 - 38 deals with protocols but it misses the fundamental problem with Microsoft and how they can hurt the industry and the consumer. How can protocols be talked about without including industry standards? Microsoft has shown that it will do what ever it takes to keep their monopoly. This has been well proven in the trial court level and upheld in the appellate court level. Yet this fact seems to have been over looked when it comes to the use of industry standard protocols by Microsoft. Microsoft has had proposals internally placed on the table to extend common protocols to help lock out competitors<sup>1</sup>.

This issue was thrust into the fore front when W2K was released with Kerberos. Microsoft had extended this common industry standard to try to lock out other Unix computers. Microsoft's extension to this industry standard is also a major part of the European case against Microsoft. It also shows how much power Microsoft has to destroy computer connectivity. Why is it that nothing has been said about Microsoft doing as so many of the smaller businesses, in this industry, must do have to have these standards changed? That is make Microsoft have to go before these bodies to get these standards changed instead of being able to dictate to the whole industry a new standard. If this issue is not addressed Microsoft will be able to use this ability to change standards to continue their predatory monopoly actions even in the new Internet age. Can one company be allowed to dictate to the whole world how business should be ran? Should not Microsoft be forced to use common standards so that all competitors will have a chance?

On page 39 the whole world has been told that Microsoft does not have to disclose protocols if these disclosures would compromise system security. Listed items are anti-piracy, anti-virus, software licensing, digital rights management, encryption and authentication features. First of all, Microsoft is not the only business that has had find ways to handle anti-piracy, anti-virus, software licensing, and digital rights management. Every business that produces software has had these issues and all of them have found a way to make them work. The only difference is that all the other business have not always be able to have both the OS and the application under their control. So these businesses have turned to common industry standards, and practices, to find a solutions. Why should Microsoft be able to change these standards just because they are the largest software company and control the OS and office suites? As far as encryption and authentication, how does this section protect the industry and consumer from being blackmailed by Microsoft into lower or less secure standards?

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1. Halloween documents <http://www.opensource.org/halloween1.html>, <http://www.opensource.org/halloween12.html>, and <http://www.opensource.org/halloween3.html>,

How can this type of control and influence be bad for the consumer? Bill Gates once said to the German magazine (FOCUS) that bugs (defects) are unimportant<sup>1</sup>. Also Microsoft, itself, has documented that there were 63,000 known defects in Windows 2000, W2K, when it shipped<sup>2</sup>. If it is more important to Microsoft to get the product out than to get a properly running product out, how can Microsoft be trusted to do a protocol standard right without other industry leaders giving input?

Page 40 allows Microsoft to enter into a contract with a developer that limits that developer from promoting other competing software if such limitation are reasonably necessary. The problem here is what does this really mean. For example, if Microsoft is working on a contract with a business that has some existing file converters to bring in other word processing formats into Word for Windows, WinWord, can Microsoft restrict the contracting company from exporting from WinWord so that there is no way to convert out of the Microsoft product? How does this wording work in the internet business model?

On page 45 the second paragraph talks about removing middleware. How is this effected with help files? No matter what browser is installed on a Microsoft computer, when the HTML help system is invoked Internet Explorer, IE, is the only browser used to display the HTML files. This means that no matter what browser is used to surf the internet IE must be present for HTML help to work. How does this section handle this issue? Does this not allow Microsoft to continue this practice?

Also on this same page it is talked about the technical changes to W2K and XP, yet it only gives a timeline for the XP changes. What happens to W2K? There are many consumers that have privacy issues with XP so it is very important that W2K changes must be made and W2K must be maintained.

On page 48 it states that Microsoft can not prompt a user for OEM custom changes for 14 days. Does this mean that Microsoft can then prompt the user all the time until they get so fed up with the prompts they allow Microsoft to change the computer configuration? Why is this even in the document? Is Microsoft saying that if an OEM sets up a computer that users are to stupid to change the factory settings? Why not leave users alone altogether?

I give you all a hand for the concept of the TC. This is a great way to ensure that Microsoft abides by the settlement without creating a whole new branch of the government to do the oversight. I have just one question: Who's stupid idea was it to add the section on page 58 that the TC information can not be used in any proceeding before the Court? Is this a "get out of jail free card" for Microsoft? Are you trying to make it cost the tax payer more money to make sure Microsoft plays by the rules? Is this a loophole that Microsoft can use later so that it can get off the hook after it has failed to follow this settlement? What am I missing? This is something to lead the public to believe that Microsoft is paying a price for breaking the law when it is doing nothing but rewarding Microsoft for do something that no other company

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1. FOCUS Oct 23, 1995 - found on-line at <http://www.cantrip.org/nobugs.html>

2. Microsoft, Who Let the Bugs Out? osOpinion.com Oct 23, 2001 - found on-line at <http://www.osopinion.com/perl/story/14306.html>



has been able to do; break the law and get away with it? This whole section should be removed.

Again on page 60 it looks like there is another loophole that is good for Microsoft and not for the consumer. It says that after the initial five years of this settlement the Plaintiffs may ask for a two year extension. What happens if Microsoft still has problems in the two year extension, nothing? What is the public to think about this? If Microsoft puts up with the TC long enough that everything will go away not matter what? Is this fair for a company that broke the law?

On page 62, where there is a list of relief that was looked at but not part of the settlement. In this list there were a couple of items that I find hard to believe were not part of this settlement. I find these two issues to hard to skip over with the weight of what this outcome has on the consumer and the industry as a whole. The first one not ensuring that Microsoft includes non-Microsoft middleware in its distribution of the Windows Operating System. The example here was the Java Virtual Machine, JVM. I go back to what I said before, are we to believe that only Microsoft knows where the direction of the industry should be going? Or should we take it that Microsoft should be allowed to find new ways to maintain it's monopoly at the expense of the consumer? What is it so hard to about Microsoft being require Microsoft follow industry standards like any other business? Is everyone afraid that Microsoft would have to compete with more competition if this is done? After all is it unreasonable for Microsoft to lower the barrier to entry since that was one of the key points of this whole case?

The other item in this list was requiring Microsoft to fully support industry standards. Was this dropped because to force this on Microsoft would also allow other competitors into the market place? Does this point to this whole settlement being nothing more than smoke and mirrors? These two items alone could have great impact on restoring competition to the market. How could these have been overlooked, or removed from the list?

Now lets look at some of the other overlooked problems with this settlement. Right now Microsoft seems to have a lot of security problems. This may be misleading in some ways. What I mean is that Microsoft may not be any worst at security than any one else, but because there is no other real competition it makes Microsoft a perfect target<sup>1</sup>. This would lead one to believe that for the public's best interest there needs to be a viable option to the Windows OS. This will never happen as long as Microsoft continues down it current path of total monopolization of the PC OS. This is where this settlement fails the most. I would hope that this is not that hard to see and understand, am I wrong?

On Page 10 of Competitive Impact Statement there is a perfect commit that says that users want to know the OS will have the needed applications before investing in an OS. This is important observation. Where does this settlement help towards that goal? Or is it that this goal is to big of a price to be paid for hurting the consumer and destroying competition with predatory practices? How could the Declaration of Carl Shapiro be overlooked when he said that one of the reasons that Linux failed to be competition to

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1. Good security administration is crucial by Madeline Bennett, IT Week Friday October 19, 2001.

Windows is because of the lack of popular applications like Microsoft Office<sup>1</sup>. This alone would allow competition back into this industry. So why not have Microsoft port its office suite to Linux? Would this not help restore true competition without rewarding Microsoft for breaking the law? If Microsoft had to port this suite and was required to support it on the Linux platform for three years would not that do much better over all? Just think, if Microsoft had a product line on Linux, it would be less likely to "expand" industry protocols to lock out an OS that it would be trying to recover their expense for porting to. What would be wrong with this? Or are you saying that the industry and consumer are not important in this matter?

These types of relief would go very far to really help innovation by allowing true competition back into the market place. This is what this industry, and the consumer, need. Overall the current settlement penalizes other business for Microsoft's conduct and it even rewards Microsoft for breaking the law. This is a shame. I hope that this is reject and a real settlement that benefits the industry and consumers is reached.

In the above commits it should also be clear that this settlement, as currently proposed, will do nothing in keeping Microsoft from using predatory practices with the way the current market is moving. We can not expect reliefs based off of the way the industry worked in the past to apply to the way it does business today when it is a different business world and the current settlement does not take that into account. This must not be overlooked if real relief is to be made for the consumer and for the industry as a whole.

There are many ways that this settlement encourages Microsoft to continue its current goals for removing all competitors from the market and that means there was a lot of wasted money to get a court ruling that does not change anything. At what point will it finally be accepted that Microsoft will only learn a lesson if it required to give up some of its monopoly power? When will the industry and the consumer finally be defended?

Thank You,

David Demland

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1. Declaration of Carl Shapiro page 3.